



DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 5

[Docket No. MSHA-2014-0016]

RIN: 1219-AB82

Fees for Testing, Evaluation, and Approval of Mining Products

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Proposed rule.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) proposes to amend the Agency's regulations for administering fees for testing, evaluation, and approval of products manufactured for use in mines. This proposed rule would revise the fees charged for these services. The proposed rule also would include a fee for approval services that MSHA provides to applicants or approval holders under the existing rule, but for which the Agency currently does not charge a fee, and for other activities required to support the approval process.

**DATES:** Comments must be received or postmarked by midnight Eastern Daylight Saving Time on [Insert date 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** Submit comments and informational materials, identified by RIN 1219-AB82 or Docket No. MSHA-2014-0016, by one of the following methods:

- *Federal E-Rulemaking Portal:*  
<http://www.regulations.gov>. Follow the on-line instructions for submitting comments for Docket No. MSHA-2014-0016.
- *Electronic mail:* [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov). Include RIN 1219-AB82 or Docket No. MSHA-2014-0016 in the subject line of the message.
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939.
- *Facsimile:* 202-693-9441.
- *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 21st floor.
- *Instructions:* All submissions must include RIN 1219-AB82 or Docket No. MSHA-2014-0016. Do not include personal information that you do not want publicly

disclosed; MSHA will post all comments without change to <http://www.regulations.gov>, and <http://www.msha.gov/currentcomments.asp>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Sheila A. McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at [mcconnell.sheila.a@dol.gov](mailto:mcconnell.sheila.a@dol.gov) (e-mail); 202-693-9440 (voice); or 202-693-9441 (facsimile). (These are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

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**I. Availability of Information.**

*Docket:* For access to the docket to read comments received, go to <http://www.regulations.gov> or

<http://www.msha.gov/currentcomments.asp>. To read background documents, go to <http://www.regulations.gov>. Review the docket in person at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal Holidays. Sign in at the receptionist's desk on the 21st floor.

*E-mail notification:* To subscribe to receive an e-mail notification when MSHA publishes rules in the *Federal Register* go to <http://www.msha.gov/subscriptions/subscribe.aspx>.

## **II. Background.**

As part of the U.S. Department of Labor, under the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, MSHA's mission is to prevent death, disease, and injury from mining and promote safe and healthy workplaces for the Nation's miners. Since 1911, MSHA and its predecessor agencies have evaluated and tested products for use in mines to prevent fires, explosions, and accidents.

Under various authorities,<sup>1</sup> MSHA historically has collected fees for its services in evaluating, testing, and

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<sup>1</sup> These authorities are: Pub. L. 61-525, Ch. 285, 36 Stat. 1419 (1911); Pub. L. 62-386, Ch. 72, Sec. 5,

approving products. Originally, the U.S. Bureau of Mines, an MSHA predecessor agency, billed applicants for approval services using published individual fee schedules, e.g., each approval part in Title 30, Chapter I, provided a list of flat fees for different tests, evaluations, and other services performed for approval activities (30 FR 3752-3757). On May 8, 1987, MSHA eliminated the individual fee schedules and established part 5 which created an hourly rate for administration and calculation of fees for services in Title 30, Chapter I, Subchapter B, *Testing, Evaluation, and Approval of Mining Products* (52 FR 17506). On August 9, 2005, MSHA revised part 5 and its fee procedures. That rule eliminated the application fee, allowed preauthorization of expenditures for processing applications, and allowed outside organizations conducting part 15 testing on MSHA's behalf to set fees (70 FR 46336).

Section 205 of the Chief Financial Officers Act of 1990 (CFO Act) and Office of Management and Budget (OMB) Circular No. A-25 Revised, User Charges (7/8/1993), require

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37 Stat. 682 (1913); Pub. L. 72-212, Ch. 314, Sec. 311, 47 Stat. 410 (1932); 30 U.S.C. 961(c)(2); and Title V of the Independent Offices Appropriations Act of 1952, Pub. L. 82-137, 65 Stat. 290 (1951), as amended, 31 U.S.C. 9701.

agencies to review the user charges in their programs to ensure that charges reflect the full costs of the services provided. Traditionally, MSHA reviews its user charges annually. MSHA last revised its hourly rate under part 5 to \$97.00 on December 29, 2010 (75 FR 82074).

Section 1503 of the Consolidated and Further Continuing Appropriations Act, 2013 (Pub. L. 113-6) provided new authority for MSHA to collect fees for the approval and certification of equipment, materials, and explosives for use in mines. That law also provided that MSHA may retain up to \$2,499,000 of fees collected. The Department of Labor Appropriations Act, 2014 (Pub. L. 113-76), provides authority for MSHA to collect and retain these fees. 30 U.S.C. 966. Prior to this change, MSHA could retain up to \$1,499,000 of fees collected.

In this proposal, the term "approval" includes approvals, certifications, acceptances, and evaluations MSHA issues under Title 30, Chapter I, Subchapter B, *Testing, Evaluation, and Approval of Mining Products*.

Under the proposed rule, MSHA would (1) revise the hourly rate to include all costs associated with the approval program and (2) include internal quality control

activities and post-approval product audits in the fees charged to applicants and approval holders.

Under the proposed rule, MSHA would continue to charge an hourly rate based on costs of the Agency's overall approval activities. The approval program includes: application processing; testing and evaluation; approval decisions; post-approval activities; and termination of approvals. These Approval and Certification Center (A&CC) activities are necessary to assure that approved mine products are designed, manufactured, and maintained so their use will not cause a fire, an explosion, or other accident.

MSHA proposes to calculate the hourly rate by dividing the total approval program costs (direct and indirect) by the number of direct hours worked on all approval program activities. Under the proposal, the hourly rate would increase from \$97 under the existing rule to \$121. Using FY 2012 data, MSHA estimates that the increased hourly rate would have resulted in approximately \$1.5 million in fees collected, an increase of \$300,000 from that collected under the existing rule.

In addition to increasing the hourly rate, MSHA also proposes to charge a fee for two services for which the

Agency does not charge under the existing rule:

(1) internal quality control activities and (2) post-approval product audits. Internal quality control activities are an important part of the approval process. MSHA uses internal quality control activities to monitor and improve its testing and evaluation processes. Post-approval product audits are necessary to assure that mining products continue to be manufactured as approved. For this reason, MSHA is proposing to charge for these activities. Using FY 2012 data, internal quality control activities and post-approval product audits would have resulted in approximately \$1.2 million in additional fees at the proposed rate of \$121 per hour.

Under this proposed rule, MSHA estimates that the Agency would collect approximately \$2.7 million in total fees (based on FY 2012 approvals). MSHA recognizes that the FY 2013 and FY 2014 appropriations language provides MSHA the authority to retain only up to \$2,499,000 of fees collected. Any fees collected by MSHA above the \$2,499,000 will be credited to the Treasury general fund.



### **III. Section-by-Section Analysis.**

MSHA is proposing the following changes to its existing regulation addressing fees for testing, evaluation, and approval of mining products.

#### **A. § 5.10 Purpose and Scope.**

Existing § 5.10 would be revised by redesignating paragraph (a) as an undesignated paragraph, and by moving and revising existing § 5.10(b) and (c) to proposed § 5.30. Paragraph § 5.10(b) would be redesignated as § 5.30(c) and paragraph § 5.10(c) would be redesignated as paragraph § 5.30(d). Additionally, MSHA would move paragraph § 5.10(c)(5) (post-approval product audits) from those services for which "fees are not charged" to proposed § 5.30(c)(4) "fees are charged".

Proposed § 5.10 would provide the purpose and scope of this part: to establish a system under which MSHA charges a fee for approval program services for mining products manufactured for use in mines.

The approval program represents all the activities necessary for MSHA to assure that products approved for use in mines are designed, manufactured, and maintained in accordance with approval requirements. The approval program includes: (1) application processing; (2) testing

and evaluation; (3) approval decisions; (4) post-approval activities; and (5) the termination of approvals.

Application processing begins when an applicant files a new application for approval. MSHA administratively reviews each new application and, on determining that the application is complete, prepares a maximum fee estimate and sends it to the applicant. The applicant must agree to pay the estimated fee before MSHA will begin testing, as appropriate, and evaluating the product.

Testing and evaluation includes technical evaluation, analysis, test set up, testing, test tear down, any consultation on the application, and internal quality control activities. To assure that approved products continue to be designed, manufactured, and maintained in accordance with approval requirements, the Agency uses internal quality control programs to monitor and improve its testing and evaluation processes (e.g., internal administrative and technical reviews, internal audits, and calibration, repair, and maintenance of test equipment).

Following testing and evaluating a product, MSHA makes an approval decision and notifies the applicant by letter of its findings and decision. If the product is approved, the letter identifies the approved specifications for the

design, construction, maintenance, and conditions of use for the product. If the product is not approved or if the application is cancelled, the letter identifies the reasons for the decision. All approval documentation is kept on file at MSHA.

MSHA also conducts various post-approval activities: changing approvals (e.g., extensions<sup>2</sup> of approvals, field modifications, modification through the Revised Acceptance Modification Program), conducting post-approval product audits, field audits, responding to complaints, investigating product failures, monitoring regional or nationwide product recall or retrofit programs, and conducting administrative actions such as transfer of approval numbers.

Termination of an approval may occur when an approval holder voluntarily requests termination of an approval, when MSHA revokes an approval because of compliance or safety issues, or when MSHA issues regulations that make an approval obsolete.

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<sup>2</sup> An extension of the approval is a document MSHA issues that states that a change to the product previously approved by MSHA is approved and authorizes the continued use of the approval marking with the appropriate extension number added.

B. *§ 5.30 Fee Calculation.*

Proposed § 5.30 would address the hourly rate calculation, the activities for which MSHA would charge a fee, activities that are not subject to a fee, the fee estimate, and any changes to the fee estimate.

Under proposed § 5.30(a), MSHA would continue to charge a fee based on an hourly rate for approval program activities and other associated costs such as travel expenses and Part 15 fees. Part 15 fees for services provided to MSHA by other organizations would be set by those organizations.

Proposed paragraph § 5.30(b) is derived from existing § 5.30(a) and identifies the costs MSHA incurs in administering the approval program. Under the proposed rule, the hourly rate would be calculated to reflect the costs of the overall approval program. Under the existing rule, the hourly rate includes only the application processing, testing and evaluation, and approval decision costs.

Also under the existing rule, some post-approval activities, such as changes to approvals, are included in the approval program costs used in calculating the hourly rate. However, the costs of monitoring to assure approved

products continue to be safe and manufactured and maintained as approved (e.g., post-approval product audits) are excluded because MSHA historically considered these activities to be enforcement activities rather than approval program activities (52 FR 17507-17508). OMB Circular No. A-25 requires that agencies recover the full costs of services rendered. In light of the increase in authority to retain fees and to more accurately account for costs, MSHA proposes to include the direct and indirect cost of these activities in the hourly rate because these activities are an important part of the approval program to assure that products continue to be designed, manufactured, and maintained in accordance with the approval requirements.

Under the proposed rule, MSHA would continue to determine an hourly rate to cover direct and indirect costs. MSHA would base the hourly rate on all approval program costs the Agency incurred during a prior fiscal year. The hourly rate would be the total approval program costs (direct and indirect) divided by the number of direct hours spent on all approval program activities. Proposed paragraph § 5.30(b) lists the approval program costs that MSHA would include in the hourly rate calculation.

Proposed paragraph § 5.30(b)(1) defines direct costs as consisting of compensation and benefit costs for all hours worked in support of the approval program and is derived, in part, from existing § 5.10(b)(1) and (b)(2). These costs include approval program activities such as testing and evaluation, including internal quality control, and post-approval activities, including post-approval product audits.

Proposed paragraph § 5.30(b)(2) defines indirect costs and is derived, in part, from existing § 5.10(b)(3) and (b)(4). Indirect costs include the approval program's proportionate share of the hours worked to manage and operate the A&CC. These costs are associated with activities required for information technology (IT) and A&CC management and administration. Indirect costs would also include the approval program's proportionate share of depreciation for buildings, their improvements, and equipment; a proportionate share of utilities, equipment rental, facility and equipment maintenance, security, supplies and materials, and other costs necessary for the operation and maintenance of the A&CC; and a proportionate share of Department of Labor-provided services that would include financial systems, and audit and IT support.

Proposed § 5.30(c) is derived from existing § 5.10(b) and includes activities for which MSHA would charge a fee.

These activities would continue to include application processing (e.g., administrative and technical review of applications, computer tracking and status reporting); testing and evaluation (e.g., analysis of drawings, technical evaluation, testing, test set up and test tear down, and internal quality control activities); approval decisions (e.g., consultation on applications, records control and security, document preparation); and post-approval activities such as changes to approvals.

Under the proposed rule, MSHA would begin to charge applicants and approval holders a fee for internal quality control activities. These activities are part of the approval program. MSHA uses internal quality control activities to monitor and improve the Agency's testing and evaluation processes and quality control. These internal quality control activities assure applicants and approval holders that consistent, accurate, and up-to-date scientific methods are used when MSHA is evaluating and testing products. For example, MSHA has standard procedures to repair, maintain, and calibrate laboratory equipment in accordance with the manufacturers'

specifications. Each applicant and approval holder receives a benefit from these internal quality control activities: MSHA would distribute the hours worked and costs of internal quality control, based on the hours worked on each application. However, hours worked on specific internal quality control activities are not charged to a particular application. Instead, MSHA would charge each applicant a prorated share. MSHA proposes to calculate the prior year's quality control hours as a percentage of total hours, multiply that percentage by the number of direct hours worked on a particular application, and add the result to the number of direct hours worked on the application.

Under the proposed rule, MSHA also would begin charging approval holders for the Agency's post-approval product audits, but would not include investigations or audits based on complaints about the products. Post-approval product audits are part of the approval program (post-approval activities) because they are necessary to assure that products have been manufactured as approved. Under existing 30 CFR parts 7, 14, and 15, approval holders are subject to a post-approval product audit upon request



by MSHA. The Agency also would continue charging approval holders for changes to approvals.

Internal quality control activities and post-approval audits assure that products are and continue to be designed, manufactured, and maintained in accordance with the approval requirements to ensure the health and safety of miners. For these reasons, MSHA is proposing to charge a fee for these activities.

Existing § 5.10(c)(1), (c)(2), (c)(3), and (c)(4) would be revised and redesignated, in part, as proposed § 5.30(d).

Proposed § 5.30(d) would address the activities for which MSHA would not charge a fee. These include technical assistance not related to approval applications; technical programs including development of new technology programs; participation in research conducted by other government agencies or private organizations; and regulatory review activities, including participation in the development of health and safety standards, regulations, and legislation.

Existing § 5.30(b), § 5.30(c), and § 5.30(d) would be redesignated as proposed § 5.30(e), § 5.30(f), and § 5.30(g) under the Fee Calculation section.

Proposed paragraph § 5.30(e) would be revised by renumbering paragraphs § 5.30(b)(1) and (b)(2) as § 5.30(e)(1) and (e)(2), respectively. Proposed paragraphs § 5.30(f) and (g) would remain unchanged.

*C. § 5.40 Fee Administration.*

Proposed § 5.40 is revised by adding "approval holders" to entities to be billed and replacing "processing of the application is completed" with "approval program activities are completed." MSHA would continue to charge applicants a fee for approvals and some post-approval activities (e.g., modification to approvals), and proposes to charge approval holders a fee for post-approval product audits when the approval program activities are completed.

*D. § 5.50 Fee Revisions.*

Proposed § 5.50 is amended by replacing "fee schedule" with "hourly rate" because MSHA no longer has a fee schedule.

**IV. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review.**

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to

select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. To comply with these Executive Orders, MSHA has included the following impact analysis.

Section 3(f) of the E.O. 12866 defines a significant regulatory action as an action that is likely to result in a rule that: (1) has an annual effect on the economy of \$100 million or more, or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this is a significant regulatory action.

The proposed rule would not have an annual effect of \$100 million or more on the economy and, under E.O. 12866, is not considered economically significant. MSHA has not prepared a separate preliminary regulatory economic analysis for this rulemaking. Rather, the analysis is presented below.

*A. Overview.*

MSHA proposes to continue to charge a fee for approval services based on an hourly rate. As under the existing rule, MSHA's hourly rate would include direct costs and indirect costs. However, under the proposed rule, MSHA would calculate the hourly rate by dividing all approval program costs incurred by the Agency during a prior fiscal year by the number of direct hours spent on approval program activities for the same period.

The proposed rule would increase the hourly rate from \$97 to \$121, an increase of \$24.

MSHA would also begin to charge a fee for internal quality control activities and post-approval product audits. In FY 2012, MSHA collected approximately \$1.2 million in fees. Under this proposed rule, MSHA estimates that the Agency would have collected a total of \$2.7 million in fees in FY 2012, an increase of \$1.5 million.

The charges under the proposed rule are fees and are considered under OMB Circular No. A-4, Regulatory Analysis (09/17/2003) as transfer payments, not costs. Transfer payments are payments from one group to another that do not affect total resources available to society. Under the proposed rule, the applicant or the approval holder pays for services for which they receive a benefit. These services are currently paid for by the taxpayer.

Because the fees MSHA collects are a transfer, there are zero costs and zero benefits regardless of the discount rate (OMB Circular No. A-4, Regulatory Analysis (09/17/2003,) Section (G) Accounting Statement).

*B. Benefits.*

The rule would not produce any quantifiable benefits because the only impact is the transfer payment.

*C. Projected Impacts.*

MSHA analyzed A&CC invoice data from Fiscal Year (FY) 2012. Using the U.S. Economic Census North American Industry Classification System (NAICS) data, MSHA estimated the impact of the proposed rule on mining and non-mining industries. NAICS is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing

statistical data related to the U.S. business economy  
(<http://www.census.gov/eos/www/naics/>).

From the A&CC post-approval product audit data and FY 2012 invoices, MSHA identified 30 industries that received A&CC approval program services. MSHA grouped this data into three general industry categories: Coal Mining, Other Mining, and Non-Mining.

MSHA estimated the fees that would be collected under this proposed rule by summing the impact of the hourly rate increase and the increase from charging for internal quality control activities and post-approval product audits. Under this proposed rule, fees would increase by approximately \$1.5 million annually (\$0.3 million from the hourly rate increase + \$1.1 million for internal quality control activities + \$0.1 million for post-approval product audit activities). Of the \$1.5 million, the increase in fees for the mining industries would total approximately \$0.9 million annually. The remaining \$0.6 million would be distributed among the non-mining industries that seek product approval from MSHA.

MSHA estimated the fee increase from the proposed hourly rate by multiplying the number of chargeable hours for FY 2012 (12,189), by the proposed hourly rate of \$121.

In 2012, MSHA estimated that the proposed hourly rate would have resulted in approximately \$1.5 million in fees collected, an increase of \$300,000  $((\$121 \text{ new rate} - \$97 \text{ old rate}) \times 12,189 \text{ hours})$ .

MSHA also estimated the fees from charging for internal quality control activities. MSHA uses internal quality control activities to monitor and improve the Agency's testing and evaluation processes. These activities include internal process reviews, maintaining laboratory equipment, and repairing, maintaining, and calibrating laboratory equipment to assure the equipment produces reliable and accurate results. In FY 2012, MSHA spent 9,015 hours on these activities. MSHA multiplied the 9,015 hours by the proposed \$121 hourly rate. This results in an estimated annual impact of \$1.1 million.

In addition, MSHA analyzed post-approval product audit data from 2008 to 2012 to estimate the increase in fees from charging for these services. In any given year, post-approval product audits are completed only on a subset of the total products approved by the A&CC. In 2012, MSHA spent approximately 1,000 hours on 125 post-approval product audits. Multiplying the 1,000 hours by the proposed \$121 hourly rate results in an estimated annual

impact of \$121,000. The average estimated impact would have been \$970 for each approval holder audited in 2012.

## **V. Feasibility.**

MSHA concludes that the proposed rule would be economically feasible.

MSHA has traditionally used a revenue screening test – whether the annualized compliance costs of a regulation are less than one percent of revenues (dollar change/revenue), or are negative (i.e., provide net cost savings) to establish presumptively that compliance with the regulation is economically feasible. MSHA relies on Agency data to identify revenue for covered mining entities and the 2007 Economic Census data to identify revenue by NAICS industry categories for non-mining entities.

MSHA performed the revenue screening test comparing the annual impact to annual revenues for all three categories and found that the percentage impact rounds to zero percent of revenue in each case. Given the relatively small impact compared to industry total revenues, any further analysis would not be productive.

Because the estimated impacts are below one percent of estimated annual revenue of the impacted industries, MSHA



concludes that compliance with the provisions of the proposed rule is economically feasible.

**VI. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking.**

The Regulatory Flexibility Act of 1980 (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 and other statutes, and E.O. 13272 requires agencies to consider the effects of their proposed and existing regulations on small entities and to examine alternatives that would minimize the small entity impacts while still meeting the regulations' purposes. MSHA has reviewed the proposed rule to assess the potential impact on small businesses, small governmental jurisdictions, and small organizations.

The applicants who would be affected by the proposed rule represent 30 industries. The SBA size standard for a small entity (13 CFR 121.201) differs by industry code. For mining, SBA defines a small entity as one with 500 or fewer employees. For non-mining industries that would be impacted by this rule, SBA defines a small entity as one that has revenues of \$7.5 million or less.

MSHA used the FY 2012 invoice data and NAICS industry data to evaluate the small business impact. For the non-mining industries, the affected industries represent small business revenues of approximately \$474 billion. The proposed rule would increase fees for non-mining industries by approximately \$0.5 million. The impact from an increase in fees is essentially zero percent of revenue ( $\$0.5 \text{ million} / \$474 \text{ billion}$ ).

For the mining industries, MSHA data shows small coal mine revenues of \$31 billion. The proposed rule would increase fees for coal mines by approximately \$0.9 million. MSHA data shows other than coal small mine revenues of \$57 billion. The proposed rule would increase fees for mines other than coal by approximately \$6,000. The impact from an increase in fees is zero percent for both mining categories. Approximately \$100,000 in increased fees is primarily attributable to foreign entities. MSHA concludes that the impact on the U.S. economy and its businesses would be *de minimis*.

Given that the maximum possible impact for both mining and non-mining categories rounds to zero percent, the Agency concludes that, using either the SBA definition of small mines (500 or fewer employees) or using MSHA's

traditional definition of small mines (1-19 employees), it can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

#### **VII. Paperwork Reduction Act of 1995.**

This proposed rule contains no information collections subject to review by OMB under the Paperwork Reduction Act of 1995.

#### **VIII. Other Regulatory Considerations.**

##### *A. The Unfunded Mandates Reform Act of 1995.*

MSHA has reviewed the proposed rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that this proposed rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor would it increase private sector expenditures by more than \$100 million (adjusted for inflation) in any one year or significantly or uniquely affect small governments. Accordingly, under the Unfunded Mandates Reform Act, no further Agency action or analysis is required.

*B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families.*

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note), as amended, requires agencies to assess the impact of agency action on family well-being. MSHA has determined that this proposed rule would have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. Accordingly, MSHA certifies that this proposed rule would not impact family well-being.

*C. Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights.*

Executive Order 12630 requires Federal agencies to "identify the takings implications of proposed regulatory actions ...." MSHA has determined that this proposed rule would not include a regulatory or policy action with takings implications. Accordingly, under E.O. 12630, no further Agency action or analysis is required.

D. *Executive Order 12988: Civil Justice Reform.*

Executive Order 12988 contains requirements for Federal agencies promulgating new regulations or reviewing existing regulations to minimize litigation by eliminating drafting errors and ambiguity, providing a clear legal standard for affected conduct rather than a general standard, promoting simplification, and reducing burden. MSHA has reviewed this proposed rule and has determined that it would meet the applicable standards provided in E.O. 12988 to minimize litigation and undue burden on the Federal court system.

E. *Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks.*

MSHA has determined that this proposed rule would have no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

F. *Executive Order 13132: Federalism.*

MSHA has determined that this proposed rule does not have federalism implications because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Accordingly, under E.O. 13132, no further Agency action or analysis is required.

*G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments.*

MSHA has determined that this proposed rule does not have tribal implications because it would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Accordingly, under E.O. 13175, no further Agency action or analysis is required.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.*

MSHA has reviewed this proposed rule for its impact on the supply, distribution, and use of energy because it applies to the coal mining industry. Insofar as the proposed rule would result in an increase to the yearly transfer of \$0.9 million for the coal mining industry relative to annual revenues of \$45 billion in 2011 (latest full year of data), it is not a "significant energy action" because it is not "likely to have a significant adverse

effect on the supply, distribution, or use of energy (including a shortfall in supply, price increases, and increased use of foreign supplies)." Accordingly, under E.O. 13211, no further Agency action or analysis is required.

**List of Subjects in 30 CFR Part 5**

Mine safety and health.

Dated: October 6, 2014

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Joseph A. Main  
Assistant Secretary for  
Mine Safety and Health

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, as amended, MSHA is proposing to amend Chapter I of Title 30 of the Code of Federal Regulations as follows:

SUBCHAPTER B-TESTING, EVALUATION, AND APPROVAL OF MINING PRODUCTS

PART 5-FEES FOR TESTING, EVALUATION, AND APPROVAL OF MINING PRODUCTS

1. The authority citation for part 5 continues to read as follows:

Authority: 30 U.S.C. 957.

2. Revise § 5.10 to read as follows:

**§ 5.10 Purpose and scope.**

This part establishes a system under which MSHA charges a fee for services provided. This part includes the management and calculation of fees for the approval program which includes: application processing, testing and evaluation, approval decisions, post-approval activities, and termination of approvals.

3. Revise § 5.30 to read as follows:

**§ 5.30 Fee calculation.**

(a) *Fee calculation.* MSHA charges a fee based on an hourly rate for approval activities and other associated costs such as travel expenses and Part 15 fees. Part 15 fees for services provided to MSHA by other organizations may be set by those organizations.

(b) *Hourly rate calculation.* The hourly rate consists of direct and indirect costs of the approval program, divided by the number of direct hours worked on all approval program activities.

(1) Direct costs are compensation and benefit costs for hours worked on approval program activities.

(2) Indirect costs are a proportionate share of the following costs:



(i) Compensation and benefit hours worked in support of all activities of the Approval and Certification Center;

(ii) Building and equipment depreciation costs of the Approval and Certification Center;

(iii) Utilities, facility and equipment maintenance, and supplies and materials of the Approval and Certification Center; and

(iv) Information Technology and other services centrally provided by MSHA to the Approval and Certification Center.

(c) Fees are charged for:

(1) Application processing (e.g., administrative and technical review of applications, computer tracking and status reporting);

(2) Testing and evaluation (e.g., analysis of drawings, technical evaluation, testing, test set up and test tear down, and internal quality control activities);

(3) Approval decisions (e.g., consultation on applications, records control and security, document preparation); and

(4) Post-approval activities: changes to approvals and post-approval product audits.

(d) Fees are not charged for:

(1) Technical assistance not related to processing an approval application;

(2) Technical programs including development of new technology programs;

(3) Participation in research conducted by other government agencies or private organizations; and

(4) Regulatory review activities, including participation in the development of health and safety standards, regulations, and legislation.

(e) *Fee estimate.* Except as provided in paragraphs (e)(1) and (e)(2) of this section, on completion of an initial administrative review of the application, the Approval and Certification Center will prepare a maximum fee estimate for each application and will begin the technical evaluation once the applicant authorizes the fee estimate.

(1) The applicant may pre-authorize an expenditure for services, and may further choose to pre-authorize either a maximum dollar amount or an expenditure without a specified maximum amount. All applications containing a pre-authorization statement will be put in the queue for the technical evaluation upon completion of an initial

administrative review. MSHA will concurrently prepare a maximum fee estimate for applications containing a statement pre-authorizing a maximum dollar amount, and will provide the applicant with this estimate. Where MSHA's estimated maximum fee exceeds the pre-authorized maximum dollar amount, the applicant has the choice of cancelling the action and paying for all work done up to the time of the cancellation, or authorizing MSHA's estimate.

(2) Under the Revised Acceptance Modification Program (RAMP), MSHA expedites applications for acceptance of minor changes to previously approved, certified, accepted, or evaluated products. The applicant must pre-authorize a fixed dollar amount, set by MSHA, for processing the application.

(f) If unforeseen circumstances are discovered during the evaluation, and MSHA determines that these circumstances would result in the actual costs exceeding either the pre-authorized expenditure or the authorized maximum fee estimate, as appropriate, MSHA will prepare a revised maximum fee estimate for completing the evaluation. The applicant will have the option of either cancelling the action and paying for services rendered or authorizing

MSHA's revised estimate, in which case MSHA will continue to test and evaluate the product.

(g) If the actual cost of processing the application is less than MSHA's maximum fee estimate, MSHA will charge the actual cost.

4. Revise § 5.40 to read as follows:

**§ 5.40 Fee administration.**

Applicants and approval holders will be billed for all fees, including actual travel expenses, if any, when approval program activities are completed. Invoices will contain specific payment instruction, including the address to mail payments and authorized methods of payment.

5. Revise § 5.50 to read as follows:

**§ 5.50 Fee revisions.**

The hourly rate will remain in effect for at least one year and be subject to revision at least once every three years.

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